

7 FAM 1150

ACQUISITION OF U.S. CITIZENSHIP BY NATURALIZATION

(CT:CON-523; 07-08-2014)
(Office of Origin: CA/OCS/L)

7 FAM 1151 INTRODUCTION

(CT:CON-449; 03-25-2013)

- a. This subchapter incorporates changes made in the newly published revised visa regulations, 22 CFR Parts 41 and 42, published at Federal Register Volume 73, No. 55, pages 14926-14934 (Public Notice: 6135), Visas: Documentation of Immigrants and Nonimmigrants --Visa Classification Symbols listed are for children residing habitually in Hague Adoption Convention countries who have been or will be adopted by U.S. citizens who are habitually residents in the United States (IH3, IH4). (See 7 FAM 1159.2 a Note About U.S. Visa Immediate Relative Categories.)
- b. 8 U.S.C. 1101(a)(23); INA 101(a)(23) defines naturalization as "the conferring of nationality of a state upon a person after birth by any means whatsoever." For the purposes of this subchapter naturalization includes:
 - (1) Naturalization of an individual adult;
 - (2) Derivative naturalization acquired through the naturalization of another (spouses and children);
 - (3) Collective naturalization, the naturalization of large groups of non-citizens that has occasionally taken place through legislative enactments following the acquisition of new territory or other historical event;
 - (4) Expeditious naturalization; and
 - (5) "Automatic" acquisition of U.S. citizenship after birth, a form of naturalization by certain children born abroad to U.S. citizen parents or children adopted abroad by U.S. citizen parents.
- c. Questions about acquisition of citizenship through naturalization:
 - (1) Domestic Passport Agencies and Centers should contact CA/PPT/L/LA at CAPPTADJQ@state.gov.
 - (2) Consular Officers abroad should contact CA/OCS/L (Ask-OCS-L@state.gov).
- d. The Family Liaison Office (FLO) has information about naturalization and Foreign Service families.

UNCLASSIFIED (U)

Family Liaison Office (FLO) ...
FLO Naturalization Intranet Page

- e. Public inquiries about the naturalization process should be directed to the U.S. Citizenship and Immigration Service (USCIS).

See ...

USCIS Guide to Naturalization

USCIS Guide to Naturalization for Military Personnel

Oath of Allegiance for Naturalized Citizens (8 U.S.C. 1448, INA 337; 8 CFR 1337)

7 FAM 1152 AUTHORITIES FOR NATURALIZATION

(CT:CON-449; 03-25-2013)

- a. On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) as the U.S. Citizenship and Immigration Services (USCIS). (See the Homeland Security Act of 2002 (Public Law 107-296) and the Consolidated Appropriations Resolution of 2003 (117 Statutes at Large 11), (Public Law 108-7).)
- b. INA 310 through INA 339, as amended, (8 U.S.C. 1422 - 8 U.S.C. 1450) provide the current statutory provisions governing naturalization.
- c. Sections 301 through 347 of the Nationality Act of 1940 (54 Statutes at Large 1140-1168) set forth the requirements and procedures relating to naturalization which became effective on January 13, 1941.

See the Consular Affairs Intranet (CA Web) Citizens Services Legal or Regulatory Documents for links to the Nationality Act of 1940.

- d. For questions about naturalization of adults under statutes enacted before the Nationality Act of 1940 contact:
- (1) Domestic Passport Agencies and Centers should contact CA/PPT/L/LA at CAPPTADJQ@state.gov.
 - (2) Consular Officers abroad should contact CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1153 RECORD OF NATURALIZATION

(CT:CON-523; 07-08-2014)

- a. Evidence of Citizenship: An adult naturalized as a U.S. citizen in his/her own

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

right must submit with their passport application:

- (1) A Naturalization Certificate (8 CFR 338) bearing the seal of the issuing office; or
- (2) If adult naturalized citizen is not a first-time passport applicant, he/she may submit a previous U.S. passport as proof of U.S. citizenship.

NOTE: Once naturalized, a naturalized citizen has the same rights and privileges as any other citizen. Passports issued to naturalized citizens are identical to passports issued to natural born citizens.

- b. Certificates of Naturalization presented to passport specialists and consular officers may be issued by:
 - (1) U.S. Citizenship and Immigration Service (USCIS);
 - (2) A court in the United States;
 - (3) The Immigration and Naturalization Service (INS); or
 - (4) The predecessor agency to the INS, the Department of Labor and Commerce's Bureau of Immigration and Naturalization (Act of 1906, 34 Statutes at Large 596).
- c. Replacing Lost Naturalization Certificates: Persons who have lost their naturalization certificates should be advised to apply to the U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services (USCIS) for replacement certificates. If the person has previously been issued a U.S. passport, the passport should be presented as proof of citizenship. If the passport has been lost or stolen, follow the procedures in 7 FAM 1370.

See ...

How Do I Replace My Certificate of Citizenship or Naturalization
How Do I Obtain Certified True Copies of My Certificate of Naturalization

- d. By law (8 U.S.C. 1443(e)), Certificates of Naturalization are proof of United States citizenship. Consequently, we are bound by law to accept them as proof of citizenship and cannot look behind the certificate. (See also 41 Opinion Attorney General 452 (1960) and 7 FAM 1386.2 b(3).)
- e. What to Do If there are Indications of Possible Fraud Regarding a Naturalization Certificate?
 - (1) Consular officers abroad (or post fraud prevention managers) can request Image Retrieval and Storage System (ISRS) images from the Forensic Document Laboratory (FDL) by telephone (703-285-2482), fax (703-285-2208) or e-mail (irt.fdl@dhs.gov);
 - (2) Requests to the FDL should contain the following information: alien registration number; name and date and place of birth of the alien; name, post, e-mail address, fax and telephone number of the requesting consular

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

officer; and the reason for the request. Posts should also consult their counterparts in CA/FPP (Consular Affairs, Office of Fraud Prevention Programs);

NOTE: Any request to USCIS or FDL regarding a naturalization certificate (or certificate of citizenship) should include the alien registration number and the certificate number of the subject; this is the way the records are maintained.

- (3) Passport specialists at domestic passport agencies and centers should consult their fraud prevention managers regarding questions concerning the validity of a naturalization certificate; *and*
- (4) If a post or passport agency believes that a Certificate of Naturalization was issued fraudulently, the person remains eligible for a U.S. passport until the naturalization certificate is revoked. (See 22 U.S.C. 2705.) Questions about this should be directed to:
 - (a) Passport Agencies and Centers: CA/PPT/L/LA at CAPPTADJQ@state.gov; *and*
 - (b) Consular officers abroad: CA/OCS/L at Ask-OCS-L@state.gov and CA/FPP.

f. Certificates of Citizenship are issued for three categories of persons:

- (1) Persons born abroad who did not acquire U.S. citizenship at birth, but have a claim to automatic U.S. citizenship after birth under INA 320 or INA 322;
- (2) INA 341 provides that persons in the United States who claim citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband can apply for a certificate of citizenship from the *U.S. Citizenship and Immigration Service*. Such persons are not required to obtain a Certificate of Citizenship before applying for a U.S. passport. *Although the text of INA 341 is as described above, the INA no longer provides for a wife to derive citizenship automatically through the naturalization or citizenship of her husband. The former statute that provided for derivative citizenship for an alien wife upon marriage, or upon naturalization of the husband was repealed in 1922, 42. Stat. 1012, chap. 411 s.2 ("That any woman who marries a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States by reason of such marriage or naturalization"); and*
- (3) U.S. citizens born abroad who derivatively acquired U.S. citizenship at birth under INA 301 or INA 309. These are the same persons who are eligible for a Form FS-240, Consular Report of a Birth Abroad of a Citizen of the United States of America. The only difference is that one generally must apply for an FS-240 prior to the age of 18 (see 7 FAM 1440) whereas, like a passport, one may apply for a Certificate of Citizenship at any time (these are not naturalization cases).

UNCLASSIFIED (U)

UNCLASSIFIED (U)

g. Proof of Claim to Citizenship Acquired by Automatic Naturalization:

- (1) Persons claiming citizenship by automatic naturalization must establish that they met all of the conditions specified by the pertinent law within the time limits set by the law;
- (2) Persons claiming citizenship by collective naturalization must show that they were in a certain place at a certain time and/or were members of the group that the law in question was designed to benefit; *and*
- (3) Children claiming citizenship through their parents' naturalization must establish that:
 - (a) Their alien parent(s) were naturalized; and
 - (b) They were legally admitted to the United States as Lawful Permanent Residents (LPR), as defined in 8 U.S.C. 1101(a)(20) (INA 101(a)(20)) and 8 CFR 1.1(p), either before or subsequent to the naturalization while they were still under the age specified by the law then in effect.

NOTE: Such children were not issued their own certificates of naturalization.

7 FAM 1154 EXPEDITIOUS NATURALIZATION

(CT:CON-313; 08-20-2009)

- a. INA 319, INA 322, INA 324, INA 327, and INA 328 provide that certain categories of aliens may be naturalized without meeting the normal residence and physical-presence requirements for naturalization. From time to time, posts receive inquiries about expeditious naturalization from persons who wish to be naturalized during a visit to the United States. Most such inquiries relate to the spouses or children of U.S. citizens employed abroad by the U.S. Government or American business firms.
- b. INA 319(b) permits spouses of U.S. citizens engaged in certain employment abroad to be naturalized after meeting all requirements for naturalization except those relating to physical presence and residence in the United States and after declaring an intention to take up residence in the United States upon the termination of the American spouse's employment.
- c. Persons who may be eligible for expeditious naturalization should contact the office of the USCIS that has jurisdiction over the proposed place of naturalization.

See ... USCIS
USCIS Where Do I Send My Application
USCIS Field Office Locator
USCIS Overseas Office Locator

7 FAM 1155 NATURALIZATION AND MILITARY SERVICE

(CT:CON-313; 08-20-2009)

- a. The INA provides special programs for naturalization of veterans.

For additional information see USIS Naturalization Information for Military Personnel

- b. The CA Internet (CA Web) Citizens Services feature includes selected historical reference material regarding specialized naturalization programs for veterans.

7 FAM 1156 EVIDENCE OF NATURALIZATION

7 FAM 1156.1 Summary

(CT:CON-313; 08-20-2009)

- a. This subsection discusses evidence of naturalization under various circumstances, including:
- (1) Naturalization of an adult in his or her own right;
 - (2) Automatic inclusion of minors in the naturalization of both parents;
 - (3) Automatic inclusion of minors in the naturalization of one parent;
 - (4) Expeditious naturalization of minors as originally enacted; and
 - (5) Expeditious naturalization of minors born to U.S. citizens abroad as amended by the Immigration and Nationality Technical Corrections Act of 1994 (INTCA) effective April 1, 1995.
- b. Expeditious naturalization of foreign national minors (both adopted and biological children of U.S. citizen(s)) under the Child Citizenship Act of 2000 is addressed in 7 FAM 1158 and 7 FAM 1159.

7 FAM 1156.2 Derivative Naturalization of Children Born Abroad Through Parents' Naturalization

(CT:CON-313; 08-20-2009)

- a. There are two significant dates in determining derivative naturalization of a child through the parent(s)' naturalization:
- (1) Date of the naturalization of parent(s) (which determines which provisions of law and evidentiary requirements apply); and
 - (2) Age of the Child: That the child be residing permanently in the United

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

States, as a Lawful Permanent Resident (LPR), with the parents and the parents' naturalization occurs before the child reaches the age specified in the pertinent statute.

- b. In addition all U.S. laws regarding automatic acquisition of derivative citizenship through naturalization of a parent required that the child be lawfully admitted to the United States for permanent residence.

7 FAM 1156.3 Naturalization Prior to May 24, 1934

(CT:CON-313; 08-20-2009)

- a. Prior to the passage of the Act of March 1907, minors acquired citizenship of the United States under Section 2172 of the Revised Statutes through the naturalization of their parents. That section of law provided citizenship for children of parents duly naturalized, if dwelling in the United States, and if they were under 21 at the time their parents were naturalized.
- b. Evidence of Citizenship Claim: A person claiming derivative naturalization as a result of a parent(s)' naturalization prior to May 24, 1934 must submit the following evidence in support of the claim:
- (1) A certified copy of the parent(s)' naturalization certificate bearing the seal of the issuing court;
 - (2) Evidence that the child was under the age of 21 at the time the parent(s) were naturalized;
 - (3) Evidence that the child was residing in the United States with the parents while under the age of 21; and
 - (4) Evidence that the child was lawfully admitted to the United States for permanent residence such as a foreign passport with a U.S. immigrant visa or Alien Registration Card.
- c. Section 5 of the Act of March 2, 1907 provided that citizenship was not acquired by the child until it began to reside permanently in the United States. Permanent residence could begin after the parent(s)' naturalization, provided the child was under 21 years of age.

7 FAM 1156.4 Naturalization Prior to May 24, 1934 Chart

(CT:CON-313; 08-20-2009)

Date of Parent(s)' Naturalization	Who Naturalized	Age Limit	Date of Automatic Acquisition If Residing in	Date of Automatic Acquisition If Residing	Law Applicable

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

			United States	Abroad	
Prior to March 2, 1907	Either parent	Under 21	Date of naturalization of parent	Date child lawfully admitted for to United States for permanent residence	Section 2172 Revised Statutes (Act of April 14, 1802)
March 2, 1907 to Noon Eastern Standard Time May 24, 1934	Either parent	Under 21	Date of naturalization of parent	Date child lawfully admitted to United States for permanent residence	Section 2172 Revised Statutes; Section 5 of Act of March 2, 1907

7 FAM 1156.5 Naturalization of Children by Parents' Naturalization On Or After 12 O'Clock Noon, Eastern Standard Time, May 24, 1934

(CT:CON-313; 08-20-2009)

- a. Section 5 of the Act of March 2, 1907 was amended by Section 2 of the Act of May 24, 1934 to provide citizenship of the United States for children born abroad of alien parents, through the naturalization by the father or mother. The naturalization must take place during the child's minority, and citizenship did not begin until five years after the child began to reside permanently in the United States.
- b. Evidence of Citizenship Claim: A person claiming derivative naturalization under the Act of May 24, 1934 must submit the following evidence in support of the claim:
 - (1) A certified copy of a certificate of naturalization bearing the seal of the court, issued on or after May 24, 1934;
 - (2) Evidence of the child's birth reflecting that the child was under the age of 21 when the parent was naturalized;
 - (3) Evidence that the child was residing permanently in the United States for five years after the parent's naturalization; and evidence that the child was lawfully admitted to the United States for permanent residence such as a foreign passport with a U.S. immigrant visa or alien registration card;

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (4) If one parent is deceased and the applicant is claiming citizenship through the naturalization of the surviving parent, the death certificate must be submitted; and
- (5) Parent Having Legal Custody: Custody can be inferred from the totality of the application.

7 FAM 1156.6 Naturalization of Children by Parents' Naturalization On Or After 12 O'Clock Noon, Eastern Standard Time, May 24, 1934 Chart

(CT:CON-313; 08-20-2009)

Date of Parent(s)' Naturalization	Who Naturalized	Age Limit	Date of Automatic Acquisition If Residing in United States	Date of Automatic Acquisition If Residing Abroad	Law Applicable
Noon Eastern Standard Time May 24, 1934 to January 13, 1941	One parent, other remaining an alien Or Alien parent (other being a citizen); Or surviving parent; Or Parent having custody in legal separation	Under 21	Upon completion of 5 years residence in the United States, including residence completed after age 21 and after January 13, 1941	Upon completion of 5 years residence in the United States, including residence completed after age 21 and after January 13, 1941	Section 5 of Act of March 2, 1907, as amended by Section 2 of the Act of May 24, 1934

7 FAM 1156.7 Naturalization of Children Through Their Parents On and After January 13, 1941 - The Nationality Act of 1940

(CT:CON-313; 08-20-2009)

Evidence of Citizenship Claim: A person claiming derivative naturalization under the Nationality Act of 1940 on or after January 13, 1941 (the effective date of the Act), must submit the following in support of the claim:

- (1) A certified copy of the certificate of naturalization of the parent(s) bearing the seal of the court;
- (2) Evidence of the child's birth reflecting that the child was under the age of 18 when the parent was naturalized; and
- (3) Evidence that the child was residing permanently in the United States on or after the parent's naturalization, while under the age of 18; and evidence that the child was lawfully admitted to the United States for permanent residence, such as a foreign passport with a U.S. immigrant visa or alien registration card.

7 FAM 1156.8 Naturalization of Children Through Their Parents On and After January 13, 1941 - The Nationality Act of 1940 Chart

(CT:CON-313; 08-20-2009)

Date of Parent(s)' Naturalization	Who Naturalized	Age Limit	Date of Automatic Acquisition If Residing in United States	Date of Automatic Acquisition If Residing Abroad	Law Applicable
January 13, 1941 to December 24, 1952	Alien parent, other being U.S. citizen from child's birth	Under 18	Date of naturalization of parent	Date child lawfully admitted for to United States for permanent residence	Section 313 Nationality Act of 1940
January 13, 1941 to December 24, 1952	Both parents; surviving parent; or parent	Under 18	Date of naturalization of parent	Date child lawfully admitted to United States for	Section 314 Nationality Act of

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

	having custody in legal separation			permanent residence	1940
--	------------------------------------	--	--	---------------------	------

7 FAM 1156.9 Naturalization of Children Through Their Parents On and After December 24, 1952 - Section 320 of the Immigration and Nationality Act (INA) of 1952, As Originally Enacted

(CT:CON-313; 08-20-2009)

- a. The now repealed INA 320 was entitled "Child Born Outside of the United States to One Alien Parent and One Citizen Parent At Time of Birth; Conditions Under Which Citizenship Was Automatically Acquired." Inherent in the title of the section, as well as in the text, is the requirement that the U.S. citizen parent must have been a citizen at the time of the child's birth. The former Section 320(a) read in part as follows: "A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States...." Therefore, in the case at hand, the U.S. citizen parent must have been a citizen at the time of the child's birth for the child to avail him or herself of the benefits of the previous 320. There may still be claims to U.S. citizenship under this section as originally enacted.
- b. The former INA 320(a)(2) also stipulated that the child must have been "residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18." It is quite clear that the children did not automatically acquire U.S. citizenship if they were never in the United States as Lawful Permanent Residents at the time of the alien parent's naturalization or subsequent thereto while under the age of either 16 or 18 (subsequent to October 15, 1978).
- c. In considering former INA 320 cases, it was imperative to determine whether or not the child was residing or had begun to reside permanently in the United States. Absent evidence establishing that the child had a permanent residence in the United States while under the age of 16 or 18, as applicable, or had begun to establish one, citizenship acquisition would not occur. It is important therefore to consider INA 101(a)(33) wherein "residence" is defined as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." In determining whether an individual has established a permanent residence, you must consider the specific facts of each case.
- d. Evidence of Citizenship Claim: A person claiming derivative naturalization

UNCLASSIFIED (U)

through the naturalization of a parent(s) under INA 320 as originally enacted must submit the following evidence in support of the claim:

- (1) Evidence that one parent was a U.S. citizen at the time of the child's birth;
- (2) A certified copy of the certificate of naturalization of the alien parent bearing the seal of the court;
- (3) Evidence of the child's birth reflecting that the child was under the age of 18;
- (4) Evidence that the child was residing permanently pursuant to a lawful admission for permanent residence in the United States on or after the parent's naturalization, while under the age of 16; and evidence that the child was lawfully admitted to the United States for permanent residence, such as a foreign passport with a U.S. immigrant visa or alien registration card; and
- (5) If born out of wedlock and mother is naturalized, evidence that paternity has not been established by legitimation.
- (6) 7 FAM 1156.10 provides a chart summarizing the provisions of INA 320 as originally enacted, and as amended.

7 FAM 1156.10 Naturalization of Children Through Their Parents On and After December 24, 1952 - Section 320 and 321 of the Immigration and Nationality Act (INA) of 1952, As Originally Enacted Chart

(CT:CON-313; 08-20-2009)

Date of Parent(s)' Naturalization	Who Naturalized	Age Limit	Date of Automatic Acquisition If Residing in United States	Date of Automatic Acquisition If Residing Abroad When Parent(s) Naturalized	Law Applicable
Subsequent to October 5, 1978	Alien parent, other being U.S. citizen from child's birth	Under 18	Date of naturalization of parent	Date child lawfully admitted to United States for permanent residence	INA 320, as amended

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Subsequent to December 24, 1952	Alien parent, other being U.S. citizen from child's birth	Under 16, but see 7 FAM 1156.11, this section has been reinterpreted to apply from December 24, 1952 to minors under the age of 18.	Date of naturalization of parent	Date child lawfully admitted to United States for permanent residence	INA 320, as originally enacted
Subsequent to December 24, 1952	Both parents; surviving parent; parent having custody in legal separation; or mother of child born out of wedlock	Under 16, but see 7 FAM 1156.11, this section has been reinterpreted to apply from December 24, 1952 to minors under the age of 18.	Date of naturalization of parent	Date child lawfully admitted to the United States for permanent residence	INA 321, as originally enacted

7 FAM 1156.11 1978 and 1981 Amendments to INA 321(a) and New Interpretation of INA 321(a) as Amended

(CT:CON-313; 08-20-2009)

- a. The Act of October 5, 1978, Public Law 95-417, 92 Statutes at Large 917 amended INA 321(a) as originally enacted, to raise from 16, to 18, the age upon which all the conditions of the law had to be fulfilled in order for citizenship to be acquired.
- b. Effective November 6, 1996, CA/PPT, CA/OCS and the former INS agreed on a more judicious interpretation of INS 321(a). It was agreed that as long as all the conditions specified in INA 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant. Citizenship would be

UNCLASSIFIED (U)

acquired on the date the last condition is satisfied.

- c. Moreover, In re Julio Augusto Fuentes-Martinez, the U.S. Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals (BIA) decided on March 18, 1997, that a child who has satisfied the statutory conditions of INA 321(a), before the age of 18 has acquired derivative United States citizenship regardless of the child's age at the time the amendments to that section of the Act of October 5, 1978 took effect. BIA concluded that "the two provisions of the 1978 Amendments, amending sections 320 and 321 of the Act, are retroactive to the December 24, 1952 enactment of the Act, and persons who can establish that they fulfilled the amended provisions may be documented as United States citizens."

7 FAM 1156.12 Immigration and Nationality Technical Corrections Act of 1994 (INTCA) -Expeditious Naturalization April 1, 1995 - February 26, 2001 - INA 322

(CT:CON-523; 07-08-2014)

- a. The Immigration and Nationality Technical Corrections Act of 1994 (INTCA) (Public Law 103-416), enacted October 25, 1994, which became effective April 1, 1995, provided for changes to INA 322, allowing a U.S. citizen who was unable to meet the transmission requirements of INA 301 as made applicable by INA 309, to apply for the expeditious naturalization of that child. The 1994 revision provided that certain prerequisites must be satisfied:
- (1) One parent must be a U.S. citizen;
 - (2) The child is physically present in the United States pursuant to a lawful admission;
 - (3) The child is under age 18 and in the legal custody of the U.S. citizen parent;
 - (4) If the child has been adopted, the adoption must have been finalized prior to the age of 16 and the child meets the adoption requirements of INA 101(a)(1)(E) or INA 101(b)(1)(F);

NOTE: This should not be confused with the Child Citizenship Act of 2000.
--

- (5) If the citizen parent has not been physically present in the United States for a minimum of five years at least two after reaching the age of 14, the child is residing in the United States as a lawful permanent resident; and
- (6) If the child is not a lawful permanent resident, he or she has a U.S. citizen grandparent who has been physically present for the requisite period of time.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- b. If the U.S. citizen parent and child (unmarried, under the age of 18) were living in the United States and the child entered the United States with a U.S. immigrant visa as a lawful permanent resident, the parent could apply for expeditious naturalization of the child at the USCIS District Office with jurisdiction over their place of residence in the United States using USCIS Form N-600, Application for Certificate of Citizenship. A person who met the requirements of the law can still apply for a Certificate of Citizenship, even though the law has been repealed.
- c. Overseas Applications: If the U.S. citizen parent and the child (unmarried, under the age of 18) were residing abroad, the child could be eligible for expeditious naturalization if the U.S. citizen parent's parent (the child's U.S. citizen grandparent) was physically present in the United States for a period totaling 5 years, 2 after the age of 14. The grandparent could be living or deceased at the time of the application. If deceased, the grandparent must have been a citizen prior to the child's birth and at the time of the grandparent's death. The parent should complete and file USCIS Form N-600-K, Application for Certificate of Citizenship Issuance of Certificate under INA 322 and send the form, supporting documents, and the required fee to one of the USCIS field offices in the United States. USCIS will determine whether the child is eligible and approve the application and forward the parent a letter and naturalization appointment. The parent should present this to the U.S. embassy or consulate. The U.S. embassy or consulate will issue the child a B-2 visa. (See 9 FAM 41.31 N14.6.) This procedure allows parents to make a "one stop" visit to the United States for the purposes of naturalizing their child as a U.S. citizen. For the naturalization benefit to be granted, the application must be filed, adjudicated, and approved by USCIS, with the oath of allegiance administered before the child's 18th birthday.
- d. Evidence of Citizenship to be presented for a person claiming expeditious naturalization under INA 322, as enacted in the Immigration and Nationality Technical Correction Act of 1994 consists of a Certificate of Citizenship issued to the applicant.
- e. If passport specialists have any questions about this contact:
 - (1) Domestic Passport Agencies and Centers should contact CA/PPT/L/LA at CAPPTADJQ@state.gov; *and*
 - (2) Consular Officers abroad should contact CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1157 ADOPTED CHILDREN AND DERIVATIVE NATURALIZATION PRIOR TO FEBRUARY 21, 2001

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

(CT:CON-313; 08-20-2009)

- a. Before October 5, 1978, foreign-born adopted children had to be naturalized in their own right. They could not claim citizenship through their adoptive parents' naturalization. Applicants in this category should submit their naturalization certificates or a previously issued U.S. passport.
- b. As of October 5, 1978 (Public Law 95-417), foreign-born children adopted by aliens who later became naturalized U.S. citizens automatically became naturalized U.S. citizens themselves provided:
 - (1) They were adopted before they reached age 16; and
 - (2) A parent naturalized before the child reached age 18.
- c. As of December 29, 1981 (Public Law 97-116), foreign-born children adopted by aliens who later became naturalized U.S. citizens automatically became naturalized U.S. citizens themselves provided:
 - (1) They were adopted before they reached age 18;
 - (2) A parent naturalized before the child reached age 18; and
 - (3) The applicant must have been residing in the United States in the lawful custody of the adoptive parents when the parent(s) were naturalized.
- d. Applicants in categories (b) or (c) must submit:
 - (1) Certificate of birth (this may be the foreign birth certificate or, if adopted/re-adopted in the United States, the state-issued birth certificate) with the seal of the issuing office;
 - (2) Certified copy of adoption decree, with translation if appropriate;
 - (3) Evidence of the adoptive parent's identity;
 - (4) Evidence of the adoptive parent's U.S. citizenship;
 - (5) Evidence that the child resides with a U.S. citizen parent; and
 - (6) Primary Evidence of Permanent Residence Status: Child's permanent resident alien registration card indicating an acceptable IR category or foreign passport with U.S. entry stamp reflecting admission as lawful permanent resident.

7 FAM 1158 CHILD CITIZENSHIP ACT OF 2000

7 FAM 1158.1 Summary

(CT:CON-320; 04-16-2010)

- a. The Child Citizenship Act of 2000 (CCA), Public Law 106-395, took effect February 27, 2001. It applies to children who were under the age of 18 on February 27, 2001; that is, children born on or after February 28, 1983.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (1) This law amended INA 320 to extend U.S. citizenship automatically to certain foreign-born children of U.S. citizens. It extended citizenship to three categories of children:
 - (a) Children of naturalized citizens;
 - (b) Children adopted abroad by U.S. citizens; and
 - (c) Children born abroad to a U.S. citizen and who do not otherwise acquire U.S. citizenship at birth under INA 301 as made applicable by INA 309.
- (2) The law repealed INA 321. It also amended INA 322 to apply only to children who reside outside the United States and who do not have Lawful Permanent Resident (LPR) status.
- (3) The statute also amended INA 322 to provide for expeditious naturalization to children born outside the United States and who do not have Lawful Permanent Resident (LPR) status. The acquisition of U.S. citizenship under the revised INA 320 or revised INA 322 is a form of expedited administrative naturalization. Section 322 INA is administered exclusively by USCIS.
- (4) Children acquiring U.S. citizenship under the Child Citizenship Act are not eligible for an FS-240, Consular Report of Birth Abroad of Citizen of the United States of America or Form DS-1350, Certification of Birth.
- (5) Stepchildren cannot avail themselves of the CCA unless they have been adopted by the U.S. citizen step parent.

See ...

Department of State (DOS) Bureau of Consular Affairs Internet
DOS Child Citizenship Act of 2000
USCIS Internet
Information for Parents of Foreign-Born Biological Children Residing in the United States
Information for Adoptive Parents of Foreign Born Orphans Residing in the United States
Information for Adoptive Parents With Children Residing Abroad
Child Citizenship Act Program Update

7 FAM 1158.2 Revised INA 320

(CT:CON-313; 08-20-2009)

Under revised INA 320 (Child Citizenship Act of 2000), a child born outside the United States (adopted or biological), as defined in INA 101(b)(1), (who did not otherwise acquire U.S. citizenship at birth under INA 301 as made applicable by INA 309), automatically becomes a citizen of the United States when all of the following conditions have been fulfilled, while the child is under the age of 18. The order in which the conditions are fulfilled has no significance:

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization;
- (2) The child is under the age of 18;
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence (Lawful Permanent Resident Alien (LPR));
- (4) INA 320 applies to a child adopted by a United States citizen if the child satisfied the requirements applicable to adopted children under INA 101(b)(1);
- (5) It also applies to children born to U.S. citizens who cannot otherwise transmit citizenship; and
- (6) INA 320 pertains to children born out of wedlock to a U.S. citizen parent who cannot otherwise transmit citizenship. (USCIS Memorandum HQ 70/34.2-P September 26, 2003, transmitting Memorandum Opinion of the Acting Assistant Attorney General, Office of Legal Counsel for the Acting Principal Legal Advisor Bureau of Citizenship and Immigration Services, Department of Homeland Security dated July 24, 2003.) A child must meet the definition of child under INA 101(c) to qualify under INA 320. Since INA 101(c) requires legitimation, and since legitimation is a concept that involves fathers (not mothers), a child born out of wedlock who claims citizenship through his/her father, must be legitimated to qualify under INA 320. Of course, to the extent that countries have adopted collective legitimation statutes, and that legitimation by actual parental act (as opposed to operation of law) is sometimes not necessary and in certain circumstances may not even be possible, that becomes relevant in the determination.

NOTE: Children adopted by U.S. citizens or claiming citizenship through the naturalization of a parent cannot benefit from INA 320 unless they have Lawful Permanent Resident status, even if they are residing in the United States.

7 FAM 1158.3 Revised INA 322

(CT:CON-313; 08-20-2009)

- a. Who May Apply: Pursuant to INA 322 (as revised by the Child Citizenship Act of 2000) a U.S. citizen parent or, if the U.S. citizen is deceased and it is within 5 years of such death, a U.S. citizen grandparent or other guardian, may submit an application for naturalization on behalf of the child born outside of the United States.
- b. USCIS will issue a Certificate of Citizenship upon proof, to the satisfaction of USCIS, that the following conditions have been fulfilled:
 - (1) Citizenship of a Parent: At least one parent is a citizen of the United

UNCLASSIFIED (U)

States, whether by birth or naturalization;

- (2) Physical Presence of a U.S. Citizen Parent or Grandparent: The United States citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14; or the U.S. citizen parent has a citizen parent (the grandparent of the child) who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining age 14;

NOTE: In order to take advantage of the physical presence of the citizen grandparent for INA 322 purposes, the U.S. citizen grandparent need not be alive. The latter's physical presence may be considered if he/she had met the physical presence requirement prior to his/her death. (USCIS Memorandum HQ 70/34.2-P April 17, 2003.)

- (3) The child is under the age of 18;
- (4) The child is residing outside of the United States in the legal and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status. Such children are issued B-2 visas. (See 9 FAM 41.31 N14.6.);
- (5) Upon approval of the application for a Certificate of Citizenship (which may be filed with USCIS from abroad) and, if not waived because of the child's age, upon taking and subscribing before an officer of USCIS within the United States to the oath of allegiance required by the INA of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by USCIS with a Certificate of Citizenship;
- (6) INA 322 pertains to children as defined under INA 101(c)(1) including those born out of wedlock to a U.S. citizen parent; and per USCIS guidance, it also pertains to children who meet the requirements applicable to an adopted child under INA 101(b)(1). (USCIS Memorandum HQ 70/34.2-P September 26, 2003.); and
- (7) Upon issuance of a Certificate of Citizenship, such a child is eligible to apply for a U.S. passport.

7 FAM 1158.4 Repeal of INA 321

(CT:CON-313; 08-20-2009)

- a. While the Child Citizenship Act of 2000 repealed INA 321, individuals may still be documented as U.S. citizens if they can show that they have met the requirements of the former INA 321 prior to its repeal on February 27, 2001.
- b. Former INA 321 (8 U.S.C. 1432) provided:

INA 321

UNCLASSIFIED (U)

“Child Born Outside of the United States of Alien Parent; Conditions Under Which Citizenship Automatically Acquired”

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

The naturalization of both parents; or

The naturalization of the surviving parent if one of the parents is deceased; or

The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if

Such naturalization takes places while such child is under the age of eighteen years; and

Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clauses (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to lawful admission for permanent residence.”

7 FAM 1159 EVIDENCE OF CITIZENSHIP UNDER THE CHILD CITIZENSHIP ACT OF 2000

7 FAM 1159.1 Evidence of Citizenship for Children Born Abroad to U.S. Citizen Parent(s) Under INA 320 as amended by the Child Citizenship Act of 2000

(CT:CON-523; 07-08-2014)

- a. Who Qualifies for U.S. Citizenship under this Statute: A child under the age of 18 (born on or after February 28, 1983) on February 27, 2001, who claims citizenship through the naturalization of a parent or child born abroad to U.S. citizen(s) who cannot transmit citizenship under any other section of the INA.
- b. Who Does Not Qualify for U.S. Citizenship: Individuals who are 18 years of age or older on February 27, 2001, do not qualify for U.S. citizenship under this new law:
 - (1) If claiming by virtue of a parent’s or parents' naturalization, they must be adjudicated in accordance with INA 321, as originally enacted. Individuals claiming citizenship under INA 320, as amended, through a U.S. citizen

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

parent who could not otherwise transmit citizenship have no predecessor statute under which to acquire citizenship;

- (2) However, individuals who cannot acquire citizenship under INA 320, as amended, may apply to USCIS for naturalization in their own right (as opposed to automatic acquisition through the expeditious CCA process);
and
 - (3) The inability to acquire citizenship under the new statute does not affect the validity of the individual's LPR status.
- c. Documenting an Individual's Status as a U.S. Citizen under Section 320 INA: Parents of children who meet the conditions for automatic acquisition of citizenship under the CCA may apply for either or both of the following to document the child's status as a U.S. citizen:
- (1) A Certificate of Citizenship from USCIS; and
 - (2) A U.S. passport from the Department of State.
- d. There is no requirement that the child be documented in order to acquire U.S. citizenship. After the effective date of the statute, individuals who meet the statutory requirements are U.S. citizens when the last of the conditions required by the statute are met. They may be documented as such at any time.
- e. Statutory requirements (for all children): A foreign-born child automatically acquires U.S. citizenship when all of the following have been met, regardless of the order:
- (1) The child has at least one United States citizen parent (by birth or naturalization);
 - (2) The child is under 18 years of age (born on or after February 28, 1983);
and
 - (3) The child is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence;
 - (a) Children residing with a surviving U.S. citizen natural parent (if the other parent is deceased) are presumed to be in that parent's legal and physical custody upon presentation of the deceased parent's death certificate;
 - (b) Children whose parents are legally separated must be in the full or joint custody of the U.S. citizen parent. In the case of joint custody, physical custody is implied regardless of the actual physical custodial situation; and
 - (c) Children born out of wedlock must be in the physical and legal custody of the naturalizing parent. If the parent naturalized is the father, the father must legitimate the child pursuant to the law of either the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

child's residence or domicile or the father's residence or domicile pursuant to INA 101(c)(1). Mothers need not legitimate children.

f. Documentary Requirements - Evidence of INA 320(a) Claim:

- (1) The child's birth certificate or record with the seal of the issuing office and the names of the parents;
- (2) Marriage certificate of child's parents (if applicable) with seal of issuing office;
- (3) Evidence of U.S. citizenship of parent (i.e., birth certificate, naturalization certificate, Form FS-240, a valid or unexpired U.S. passport, or certificate of citizenship);
- (4) In the case of divorce, or legal separation, documentation of legal custody;
and
- (5) Evidence of Permanent Residence Status:
 - (a) Permanent Resident Card/Alien Registration Card (LPR card);
 - (b) Foreign passport containing the original stamp (I-551) showing evidence of lawful admission to the United States for permanent residence;
 - (c) If the applicant cannot present his or her LPR card, or a foreign passport containing the I-551 stamp, he or she must be referred to USCIS for verification of lawful entry; *and*
 - (d) Secondary evidence such as an approved petition for immediate relative, school records, doctor's records, airline tickets, etc. are not acceptable for purposes of the statute. Such documents should not be solicited or accepted because what is needed is the verification of admission for lawful permanent residence.

NOTE ...

It does not matter in which order the law's requirements are met. A child who is presently in the United States as a Lawful Permanent Resident Alien (LPR) automatically becomes a citizen if a parent naturalizes as U.S. citizen subsequent to the child's admission as an LPR while the child is under the age of 18.

Similarly, a child who adjusts status to an immigrant having been initially admitted as a nonimmigrant, can avail him or herself of the benefits of CCA if residing in the United States in the legal and physical custody of a U.S. citizen parent.

On the other hand, a child whose parent naturalizes in the United States after the child has left the country as an LPR, does not automatically naturalize. The child would have to return to the United States as an LPR. Citizenship would then accrue automatically once the child was in the United States as an LPR in the legal and physical custody of a citizen parent, while under the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

age of 18.

NOTE: As U.S. citizens they are not required to remain in the United States for any specified period of time in order to retain the citizenship they acquired under INA Section 320.

NOTE: A certificate of citizenship issued by USCIS is not a prerequisite to the issuance of the passports, assuming that the child was admitted as an LPR in the legal and physical custody of a U.S. citizen parent.

7 FAM 1159.2 Evidence of Citizenship for Foreign National Adopted by U.S. Citizen Parent(s) Under INA 320(b) as amended by the Child Citizenship Act of 2000 (CCA)

(CT:CON-523; 07-08-2014)

- a. Evidence that the child has been admitted as an immigrant for lawful permanent residence:

NOTE ABOUT U.S. VISA Immediate Relative (IR) CATEGORIES:

IH3 – The child was a resident of a country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and with which the Convention is in force for the United States, and was the subject of a full, final, and legal adoption abroad by the petitioning U.S. citizen (and spouse, if married), and will reside in the United States with the adoptive parent or parents.

NOTE: Unlike IR3 cases, both parents are not required to see the child prior to the adoption in order for the IH3 classification to be appropriate.

IH4 – The child was a resident of a country that is a party to the Convention and with which the Convention is in force for the United States, and will be adopted by the petitioning U.S. citizen (and spouse, if married) after being admitted to the United States (requires both petitioner intent to adopt and satisfaction of any applicable pre-adoption requirements of the home state). The petitioner must have acquired legal custody and authorization for the emigration and adoption of the child.

NOTE: Adoption in another Convention country by one spouse in a married couple is not considered sufficient for a child to obtain IH3 status. In such an instance, the post issuing the visa issues the petitioner a Hague Adoption Certificate (IHAC) that bears this annotation: "One spouse of a married couple adopted the child named above. This child must be adopted by both spouses before he or she will be considered to be an adopted child under 101(b)(1)(G) of the Immigration and Nationality Act, for purposes of naturalization under sections 320 or 322 of that Act." This is treated as a custody case for immigration purposes, and IH4 status is appropriate.

IR-2 – The child was legally adopted by the petitioner (domestically or

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

abroad) before the child's 16th birthday and the child had resided with and in the legal custody of the petitioner for at last 2 years. This category also includes stepchildren who may or not be subsequently adopted by a stepparent. While granted IR-2 status, the stepchild, absent adoption by a U.S. citizen stepparent, cannot derive any benefits from the CCA. NOTE: An IR-2 can also be a biological child who does not acquire under INA 301.

IR-3 - The child was legally adopted abroad by an unmarried U.S. citizen; by two U.S. citizens jointly; or by a married U.S. citizen and alien spouse jointly.

IR-4 - The child was (1) either not legally adopted abroad, but was placed in the legal custody of the U.S. citizen by a competent authority in the child's home country so that the U.S. citizen could and would adopt the child in the United States; or, (2) was legally adopted abroad, but the adoptive parent or parents did not actually see the child prior to or during the adoption.

IR-7 - The child was legally adopted by the petitioner (domestically or abroad) before the child's 16th birthday and the child resided with and in the legal custody of the petitioner for at last 2 years. This category also includes stepchildren who may be subsequently adopted by a stepparent.

This category is identical to the IR-2 except that the visa status and category were adjusted domestically, rather than abroad. So you may have a case of a child who entered the U.S. as a tourist or a student and whose status was subsequently adjusted by the parent here in the United States.

IR-7s must be adjudicated in the same manner as IR-2s.

Reference:

9 FAM 42.21 N13.2-9 Immediate Relative (IR3 vs. IR4) Classifications and the Child Citizenship Act

9 FAM 42.21 N14.13-9 IH3, IH4 or B-2 classifications and the Child Citizenship Act

9 FAM 40.41 N4.4-1 Effect of Child Citizenship Act on Certain IR-2 and IR-3 Applicants

9 FAM 42.21 N12.10 Child Citizenship Act

CR-2 - The child is the admitted conditionally into the United States as the stepchild of a U.S. citizen who has been married to the alien parent for less than 2 years. The conditional category is valid for 2 years and may be adjusted to an IR-2 at the end of the two years. It is a conditional category because of the possibility of marriage fraud.

A child admitted as a CR-2 acquires U.S. citizenship automatically as soon as he or she meets the statutory requirements of INA 320, as amended.

Documentary Requirements

If the child is admitted as a CR-2 - the parent's marriage certificate and a copy of a full and final foreign or domestic adoption decree by a U.S. citizen.

In order for a child in this category to acquire U.S. citizenship, the adoption must have taken place by age 16 and the child must have resided with and in the custody of the U.S. citizen for 2 years. The date which citizenship is acquired could be (1) the two-year anniversary of the marriage which should coincide with the 2 year residence requirement; or (2) the date of the full and

UNCLASSIFIED (U)

final domestic adoption.

Passport specialists at domestic passport agencies and centers and consular officers abroad must verify the date of marriage to determine if the 2-year requirements (length of marriage and legal and physical custody) have been met. If one or both have not been met, the application must be denied. However, the applicant should be advised that citizenship may be acquired as soon as the 2-year requirements are met. (Acquisition will depend on whether or not the child is still in the legal and physical custody of the U.S. citizen on the day the 2-year requirement is met.)

Example: A U.S. citizen marries an alien with a 6 year old child on March 1, 2000; in December 2000, the child is granted LPR status (CR-2 category) and arrives in the United States. The U.S. citizen adopts the child on February 26, 2001 and applies for a passport on the same date. The legal and physical custody of a stepchild is presumed immediately upon the marriage of the parents. So the U.S. citizen had had legal and physical custody of the CR-2 child for a little under one year before the adoption. The application would have to be denied for now. Because this is a CR-2 category, citizenship will be acquired on the day the child fulfils the requirement of being in the physical and legal custody of the parent for 2 years - in this case, on March 1, 2002.

There is no requirement that the CR-2 status actually be adjusted to IR-2 status in order for the child to acquire citizenship as long as the child has been in the legal and physical custody of the U.S. citizen for 2 years and is under age 16 at the time of the adoption.

- (1) Child's foreign passport containing an ADIT stamp showing evidence of lawful admission to the United States for permanent residence. The I-551 stamp must indicate an acceptable IR category; or
- (2) Form I-94 with the ADIT stamp and picture attached.

NOTE: Secondary evidence of entry or LPR status, such as a copy of any approved petition for immediate relative, school records, doctor's records, airline tickets, are unacceptable for purposes of the statute. Such documents should not be solicited or accepted.

b. Evidence of Full and Final Adoption:

- (1) Certified copy of full and final adoption decree, and informal translation if appropriate, bearing the seal of the issuing authority; and
- (2) A certified copy of a full and final adoption decree is evidence of the adoption. If a foreign decree is presented, it must have an accompanying English translation.
- (3) If the child is admitted as an IR-2 - a certified copy of a full and final foreign or domestic adoption decree by a U.S. citizen. In order for a child in this category to acquire U.S. citizenship, the adoption must have taken place by age 16 or, in limited situations relating to the adoption of siblings,

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

before the age of 18, and the child must have resided with and in the custody of the U.S. citizen for 2 years. The date which citizenship is acquired depends on the order in which the statutory requirements are met: it may be (1) the date on which the child was admitted into the U.S. pursuant to lawful admission for permanent residence; (2) the date of the full and final domestic adoption; or, (3) the date on which the residency requirements are met. As will be explained below, the child must be in the legal and physical custody of the U.S. citizen parent on the date of the fulfillment of the last requirement. If the child was born after February 28, 1983 and admitted before February 27, 2001, citizenship was acquired on February 27, 2001 if the child was in the legal and physical custody of the U.S. citizen parent on that date;

- (a) Almost all children admitted to the United States as IR-2 immigrants will have met the age and residency requirements of this category;
 - (b) However, if upon reading the adoption decree, it is apparent that one or both of the requirements (adopted by age 16 and residing in the legal and physical custody of the petitioning parent) has not been met, the application must be denied;
 - (c) If the adoption decree is silent regarding length of legal custody and residence with the U.S. citizen adopting parent, additional evidence of such must be requested; *and*
 - (d) If the child is admitted as an IR-3 – only the certified copy of the foreign adoption decree, with informal translation if appropriate, is required. The date that citizenship is acquired is the date the child entered the U.S. pursuant to a lawful admission for permanent residence. If the child was born after February 28, 1983 and admitted before February 27, 2001, citizenship was acquired on February 27, 2001 if the child was in the legal and physical custody of the U.S. citizen parent on that date.
- (4) If the child is admitted as an IR-4 – Children admitted under this category have been legally adopted by their U.S. citizen parents overseas or have been placed in their temporary custody by a foreign adoption authority. However, the laws of the country where the child was adopted may not require that both parents travel to complete the adoption. Therefore, in order to acquire U.S. citizenship they must be readopted in the United States. Consequently, all children admitted as an IR-4 must submit a copy of a full and final adoption decree granted in the United States, an order issued in the child's state of residence recognizing the foreign adoption, or a statement from a competent authority that the child's state of residence does not allow re-adoption (the state does not allow a parent to adopt his/her own children). (The competent authority may vary depending on the state; it could be from a court or from the state agency which oversees adoptions. A letter from an attorney citing a state statute is acceptable

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

only if a copy of the applicable statute is provided. A declaration by an adopting parent will not be acceptable.). The date that citizenship is acquired is the date the domestic adoption decree becomes final. If the child was born after February 28, 1983 and admitted before February 27, 2001, citizenship was acquired on February 27, 2001 if the child was in the legal and physical custody of the U.S. citizen parent on that date;

NOTE: Some parents fail to finalize the foreign-born child's adoption in the United States. Such a child does not acquire U.S. citizenship automatically and must complete a domestic adoption before his or her 18th birthday before a U.S. passport can be issued. If the parents fail to complete this adoption process prior to the child's 18th birthday, the parents should be referred to USCIS for naturalization procedures.

- (5) If the child is admitted as an IH3 – Upon residing in the United States with the citizen parent, after having been lawfully admitted into the United States for permanent residence, and assuming the IH3 classification was appropriate and the Convention adoptee is under the age of 18, the child will automatically acquire U.S. citizenship as of the date of admission to the United States. The USCIS Buffalo office processes newly entering IH3 visa packets, automatically sending Certificates of Citizenship to eligible children without requiring additional forms or fees. Adoptive parents may also request a U.S. passport for the child;
- (6) If the child is admitted as an IH4 – A Convention adoptee who enters the United States on an IH4 visa acquires U.S. citizenship as of the date of a full and final adoption decree in the United States as long as the child is under age 18 at the time of adoption and is residing in the United States with the citizen parent. While citizenship is acquired as of the date of the adoption in such cases, beneficiaries will need to file Form N-600 (Application for Certificate of Citizenship) and submit it to the local USCIS District Office or Sub-Office that holds jurisdiction over their permanent residence to receive a Certificate of Citizenship; and
- (7) Alternatively, adoptive parents may request U.S. passports for the child as evidence of citizenship. Once the child has met all the conditions of the CCA, a U.S. passport may be applied for in the United States or at a post abroad.

c. Evidence of Legal and Physical Custody:

- (1) Evidence that the child is living in the legal and physical custody of the U.S. citizen applying parent;
- (2) Children who are in the United States on or after February 27, 2001 and who otherwise meet the statutory requirements must be in the legal and physical custody of a U.S. citizen parent in order to benefit from this statute; and
- (3) Legal and physical custody can be assumed upon presentation of a full and

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

complete adoption decree as described above:

- (a) If only one parent is a U.S. citizen and the parents are divorced, evidence of legal and physical custody in favor of the U.S. citizen parent must be requested. The U.S. citizen parent must have sole or joint custody in order for the child to acquire citizenship under the statute. In the case of a parent having joint custody, physical custody is not required;
- (b) The adopted child of a U.S. citizen parent having only visitation rights when the other statutory requirements are met (without joint custody) does not acquire U.S. citizenship under this statute; *and*
- (c) The adopted child of a U.S. citizen parent who dies before all the statutory requirements are met does not acquire U.S. citizenship under this statute.

NOTE: In all IR cases you must compare the full and final U.S. adoption with the foreign adoption to ensure that the same parent or parents are readopting. If there is any discrepancy, domestic passports agencies and centers should contact CA/PPT/L/LA (CAPPTADJQ@state.gov). Consular officers should contact CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1159.3 Evidence of Citizenship for Children Born to U.S. Citizen Parent(s) and Residing Abroad Under Section 322 INA as amended by the Child Citizenship Act of 2000

(CT:CON-313; 08-20-2009)

- a. A person residing abroad seeking expeditious naturalization under INA 322, as amended by the CCA, must apply to USCIS for a Certificate of Citizenship.

See ...

USCIS form N-600-K, Application for Citizenship and Issuance of Certificate under Section 322
(USCIS Memorandum HQ 70/34.2-P June 23, 2003)

- b. USCIS will notify the applying parent (or grandparent) when the application for the Certificate of Citizenship is processed and an appointment is made for the parent to bring the child to the United States for the next phase of the process.
- c. The parent should present the U.S. consular officer with the USCIS appointment letter. On this basis, the consular officer may issue the child a B-2 visa (See 9 FAM 41.31 N16 B-2 for Adoptive Child Coming to United States for Acquisition of Citizenship and 9 FAM 41.31 N14.6).
- d. If, after the appointment in the United States with USCIS, the Certificate of Citizenship is issued, that document should be presented when the applicant

7 FAM 1150 Page 28 of 29

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

applies for a U.S. passport. U.S. passports cannot be issued in INA 322 cases, as amended by the CCA, until the expeditious naturalization occurs when the Certificate of Citizenship is issued. This differs from the process of "automatic" acquisition through administrative naturalization under INA 320, as amended by the CCA.

- e. A child adopted abroad by a U.S. citizen who is not admitted to the United States as a Lawful Permanent Resident may be eligible for expeditious naturalization under INA 322. Parents should follow the above procedure to apply for a Certificate of Citizenship.

NOTE In order to take advantage of the physical presence of the citizen grandparent for INA 322 purposes, the U.S. citizen grandparent need not be alive. The latter's physical presence may be considered if he/she had met the physical presence requirement prior to his/her death. (USCIS Memorandum HQ 70/34.2-P April 17, 2003)

In INA 322 cases, if the child's U.S. citizen parent is deceased, a U.S. citizen grandparent has five years following the parent's death to apply for the certificate of citizenship for the grandchild.